N. 2912 No. 14529

United States
Court of Appeals
for the Ninth Circuit

MATANUSKA VALLEY LINES, INC., a Corporation,

Appellant.

vs.

DOROTHY NEAL and NATHANIEL NEAL, Jr.,

Appellees.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 50)

Appeal from the United States District Court for the District of Alaska, Third Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—2-4-55

No. 14529

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

WENDELL P. KAY,
604 Fourth Avenue,
Anchorage, Alaska;

J. EARL COOPER,
328 "G" Street,
Anchorage, Alaska;

JOHN R. CONNOLLY, and
HERALD STRINGER,
Central Building,
Anchorage, Alaska,

Attorneys for Appellees.

RALPH H. COTTIS,
P.O. Box 941,
Anchorage, Alaska;

EVANDER C. SMITH,
P.O. Box 2068,
Anchorage, Alaska;

RAYMOND E. PLUMMER, and
BURTON BISS,
Room 220, Central Building,
Anchorage, Alaska;

MARTIN & SHORTS,
FRANK CONNOLLY,
1026 Henry Building,
Seattle 1, Washington,

Attorneys for Appellant.

In the District Court for the Territory of Alaska,
Third Division

No. A-8214

DOROTHY NEAL and NATHANIEL NEAL, JR.,

Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a Corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS,

Defendants.

COMPLAINT

The plaintiffs complain of the defendants and for cause of action allege:

I.

That the plaintiffs, Dorothy Neal and Nathaniel Neal, Jr., are now, and were at all times mentioned herein, husband and wife.

II.

That the defendant, Matanuska Valley Lines, Inc., is now, and was at all times mentioned herein, a corporation created and existing under the laws of the Territory of Alaska, with its principal office in the City of Anchorage, and does now, and did at all times mentioned herein, own and operate a system of motor buses in and around the City of Anchorage, Territory of Alaska, and particularly

operated such motor buses on East "G" or Gambell Street in and near the said City of Anchorage.

III.

That on the 20th day of November, 1951, the defendant, John Doe Williams, whose correct first name is unknown to plaintiffs, was the owner of a truck type vehicle which was being operated on and along the said East "G" or Gambell Street by the defendant, Lois Williams.

IV.

That on the said date, to wit, the 20th day of November, 1951, the plaintiff, Dorothy Neal, was riding as a fare-paying passenger in one of the motor buses owned and operated by the said defendant, Matanuska Valley Lines, Inc., as a common carrier of passengers for hire, upon and along the said East "G" or Gambell Street at a point on the said East "G" or Gambell Street between 15th Avenue and Fireweed Lane, and while the said motor bus in which she was so riding was travelling northerly toward the City of Anchorage, the same was driven and operated so recklessly and negligently, and the truck being driven by the defendant, Lois Williams, in a southerly direction was so negligently and recklessly then and there operated, that the said motor bus and said truck collided one with the other, and the plaintiff, Dorothy Neal, was injured as hereinafter set out.

V.

That the said motor bus, in which the plaintiff, Dorothy Neal, was riding as aforesaid, was oper-

ated and driven by an agent and servant of the said defendant, Matanuska Valley Lines, Inc., and who was working within the scope of her employment and agency, to wit, in the driving and operation of said bus at said time and place.

VI.

That in said collision, caused by the joint, concurrent and contemporaneous gross recklessness and negligence of the defendants, and each of them, the plaintiff, Dorothy Neal, was seriously and permanently injured in her health, strength and activity; that the bones of her right arm were broken and shattered so seriously as to result in a crippled and misshapen limb; that the bones of her right leg were broken and shattered and the bones of her pelvis were separated and broken resulting in a permanently weakened right leg which is now more than one inch shorter than the other leg and is so crippled that she can move only with great pain and in a limping manner; that she received a profound shock to her nervous system and a bruising, straining and spraining of her muscles, ligaments and tendons; that as a result of the long confinement and the aforesaid shock and injuries she contracted tuberculosis and is now, and will be for a long time, confined to a tuberculosis sanitorium for the treatment of this disease; that said injuries are permanent; that from said injuries plaintiff, Dorothy Neal, has suffered great physical pain and mental anguish and will continue to suffer such pain and anguish; that at the time of the collision

aforesaid, plaintiff, Dorothy Neal, was then pregnant, and was put in great fear for the health and welfare of her unborn child and was forced to carry said child to delivery while in great pain and suffering and confined to the hospital for treatment of her injuries; and by reason of her tubercular condition has been separated from her child and will continue to be so separated for a period of more than a year; all to the damage of the plaintiffs in the sum of $150,000.00.

VII.

That by reason of said injuries to the plaintiff, Dorothy Neal, it was necessary for the plaintiff, Nathaniel Neal, Jr., to employ physicians and surgeons to treat his wife for which he has incurred reasonable and necessary bills totalling more than $1,750.00; that likewise, by reason of said injuries it was necessary for the plaintiff, Nathaniel Neal, Jr., to incur a reasonable and necessary hospital bill in the total amount of $2,393.65, together with other reasonable and necessary charges and expenses in and about the care of the plaintiff, Dorothy Neal, in the total sum of $2,642.93; all to the damage of the plaintiff, Nathaniel Neal, Jr., in the total sum of $6,786.58; that plaintiff, Nathaniel Neal, Jr., will be forced to incur further additional medical and hospital expense in an amount unknown.

VIII.

Solely by reason of the said injuries and nervous shock and resultant sick and diseased condition the

said plaintiff, Dorothy Neal, at all times since the infliction of said injuries has been and will permanently continue to be disabled, nervous, sick and lame, and the plaintiff, Nathaniel Neal, Jr., has thereby totally lost the consort, companionship, society and affection of his said wife, the plaintiff, Dorothy Neal; that prior to the said accident the plaintiff, Dorothy Neal, was a healthy and able-bodied woman and was able to care for the household of herself and her husband and perform the usual household duties; that further, the plaintiff, Dorothy Neal, was able to work for others as household help and was capable of earning, and did earn approximately $400.00 per month in the performance of such duties; that since said accident she has been unable to perform her household duties or work for others and will be unable, in the future, to ever perform said duties again; all to the damages of the plaintiff, Nathaniel Neal, Jr., in the sum of $75,000.00.

Wherefore, the plaintiff, Dorothy Neal, prays judgment against the defendants for the sum of $150,000.00 in damages; and the plaintiff, Nathaniel Neal, Jr., prays judgment against the defendants in the sum of $81,786.58 in damages, and for costs of this action, a reasonable attorney's fee and all other proper relief.

/s/ WENDELL P. KAY,
Of Attorneys for Plaintiffs.

Duly verified.

[Endorsed]: Filed November 14, 1952.

the statements therein contained, leaving the plaintiffs to a proof thereof.

VIII.

The defendant is without knowledge sufficient to form a belief as to the truth of allegations in Paragraph VIII of Plaintiffs' Complaint, therefore deny the statements therein contained, leaving the plaintiffs to a proof thereof.

Affirmative Defenses

In Further Answer to plaintiffs' Complaint the defendant lists the following Affirmative Defense and specifically alleges as follows:

I.

The defendant alleges that the co-defendant, Lois Williams, by her gross negligence and her drunken condition, caused the injuries, if any, to the plaintiffs, all without any fault or contribution of the defendant, Matanuska Valley Lines, Inc.

II.

That the co-defendant, Lois Williams, was so negligent, careless, reckless, and drunk in her driving in a southerly direction on East "G" or Gambell Street that she failed to properly negotiate a turn to her right and due to her speed, which was beyond the legal number of miles per hour, said Lois Williams came over onto the wrong side of said East "G" or Gambell Street and struck the Matanuska Valley Lines, Inc., bus and tore into the entire left side of said bus, ripping it apart from the front end of said bus to the rear end, thereby totally destroying the value of said unit in addition to causing

bodily injuries to all of the said passengers and driver of said bus.

III.

The accident herein referred to occurred initially on the East one-half (E½) side of the road referred to herein as "East 'G' or Gambell Street." This side of said roadway or street was properly occupied by the co-defendant, Matanuska Valley Lines, Inc., bus.

Any allegation alleged against the defendant Matanuska Valley Lines, Inc., which has not been specifically denied herein is categorically denied, leaving the plaintiffs to a strict proof thereof.

Wherefore, having fully answered plaintiffs' Complaint, the defendant, Matanuska Valley Lines, Inc., pray that the plaintiffs take nothing thereby and that the defendant have and recover of and from the plaintiffs the cost of suit herein incurred, including a reasonable attorney's fee and for such other and further relief as may seem meet and proper in the premises.

MATANUSKA VALLEY
LINES, INC.,

By /s/ RUSSELL SWANK,
President.

/s/ R. H. COTTIS, for

HELLENTHAL, HELLENTHAL & COTTIS,
Attorneys for Defendant Matanuska Valley Lines, Inc.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury of the above-entitled action for those issues so triable.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed December 8, 1952.

[Title of District Court and Cause.]

No. A-8214

SEPARATE ANSWER OF DEFENDANTS, MILTON T. WILLIAMS and LOIS WILLIAMS

Come now the above-named defendants, Milton T. Williams and Lois Williams, by and through their attorneys, Plummer & Arnell, and by way of answer to the plaintiffs' complaint, admit, deny and allege as follows:

I.

Defendants are without knowledge to form a belief as to the allegations contained in Paragraphs I and II of plaintiffs' complaint, and they, therefore, deny each and every allegation therein contained.

II.

Defendants admit the allegation contained in Paragraph III of plaintiffs' complaint.

III.

Defendants are without knowledge sufficient to form a belief as to the allegations contained in Paragraph IV of plaintiffs' complaint and they,

therefore, deny the same; defendants further specifically deny that the truck, being driven by the defendant, Lois Williams, in a southerly direction, was being operated negligently or carelessly.

IV.

Defendants are without knowledge sufficient to form a belief as to the allegations contained in Paragraph V of plaintiffs' complaint and they, therefore, deny each and every allegation therein contained.

V.

Defendants deny each and every allegation contained in Paragraph VI, VII and VIII of plaintiffs' complaint.

As a further Answer to plaintiffs' complaint, and by way of an Affirmative Defense thereto the defendants, Milton T. Williams and Lois Williams, alleges as follows:

I.

That, if in fact, on the 20th day of November, 1951, the plaintiff, Dorothy Neal, met with an accident and the plaintiffs sustained the damages alleged in their complaint, said accident was caused and said injuries were sustained solely by reason of the negligence of the defendant, Matanuska Valley Lines, Inc.

Wherefore, having fully answered plaintiffs' complaint, defendants pray that the plaintiffs take nothing thereby and that the defendants have and recover of plaintiffs their costs and disbursements

in this action incurred, including a reasonable attorney's fee to be fixed by the Court.

PLUMMER & ARNELL,

By /s/ RAYMOND E. PLUMMER,

Attorneys for Defendants, Milton T. Williams and Lois Williams.

Receipt of copy acknowledged.

[Endorsed]: Filed January 7, 1953.

[Title of District Court and Cause.]

No. A-8214

OBJECTIONS TO PROPOSED JUDGMENT

The defendant, Matanuska Valley Lines, Inc., objects to the proposed judgment herein for the following reasons:

1. A separate judgment should be entered in each case since the cases were "consolidated" only for the purposes of trial;

2. For the reasons set forth in its motion to set aside verdict or for a new trial.

Dated at Anchorage, Alaska, this 13th day of October, 1953.

/s/ RALPH H. COTTIS, of
HELLENTHAL, HELLENTHAL & COTTIS,

Attorneys for the Defendant, Matanuska Valley Lines, Inc.

Service of copy acknowledged.

[Endorsed]: Filed October 13, 1953.

In the U. S. District Court for the District of Alaska, Division Number Three, at Anchorage

No. A-8214

DOROTHY NEAL and NATHANIEL NEAL, JR.,

Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a Corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS,

Defendants.

No. A-8413

BLANCHE THOMAS,

Plaintiff,

vs.

MATANUSKA VALLEY LINES, INC., a Corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS,

Defendants.

No. A-8666

WORDIE FRAZIER and PRINCE FRAZIER,

Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a Corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS,

Defendants.

JUDGMENT

These Actions, first having been consolidated, having been regularly placed upon the calendar for trial, and having been reached for trial on the 15th day of September, 1953, the above-named plaintiffs, appearing by their attorneys, Wendell P. Kay, Herald Stringer, John Connolly and J. Earl Cooper, and the above-named defendant, Matanuska Valley Lines, Inc., appearing by its attorneys, Ralph Cottis and Evander C. Smith, and the above-named defendants, John Doe Williams, properly known as Milton T. Williams and Lois Williams, appearing by their attorneys, Raymond E. Plummer and Burton Biss, a jury of twelve persons was regularly impanelled to try said actions and witnesses on the part of the plaintiffs and the defendants were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider their verdict and subsequently returned into Court on the 24th day of September, 1953, and returned into open Court the following-numbered verdicts to wit.

Verdict No. I.

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find as follows:

For the Plaintiff, Dorothy Neal, against both defendants in the sum of $75,000.00.

Dated at Anchorage, Alaska, this 24th day of Sept., 1953.

/s/ A. L. ENGEBRETH,
Foreman.

Verdict No. II.

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find as follows:

For the Plaintiff, Nathaniel Neal, Jr., against both defendants in the sum of $17,500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. ENGEBRETH,
Foreman.

Verdict No. III.

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find as follows:

For the Plaintiff, Wordie Frazier, against both defendants in the sum of $5,000.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. ENGEBRETH,
Foreman.

Verdict No. IV.

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find as follows:

For the Plaintiff, Prince Frazier, against both defendants in the sum of $3,500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. ENGEBRETH,
Foreman.

Verdict No. V.

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find as follows:

For the Plaintiff, Blanche Thomas, against both defendants in the sum of $500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. ENGEBRETH,
Foreman.

Whereupon, at the request of the attorneys for the defendants, each member of the jury was polled and responded that the above verdicts were their verdicts, respectively.

Therefore, it is Considered and Adjudged by the Court that the said Plaintiff, Dorothy Neal, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc., and Lois Williams, or either of them, the sum of $75,000.00; that the said Plaintiff, Nathaniel Neal, Jr., do have and recover of and from the said defendants, Matanuska Valley Lines, Inc., and Lois Williams, or either of them, the sum of $17,500.00; that the said Plaintiff, Wordie Frazier, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc., and Lois Williams, or either of them, the sum of $5,000.00; that the said Plaintiff, Prince Frazier, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc., and Lois Williams, or either of them, the sum of $3,500.00; that the said Plaintiff, Blanche Thomas, do have and recover of and from the said defendants, Matanuska

Valley Lines, Inc., and Lois Williams, or either of them, the sum of $500.00; and that the said named Plaintiffs recover the further total sum of $1,845 as attorneys' fees in these causes, together with costs taxed at $276.70, and hereof let execution issue.

Dated this 12th day of October, 1953.

/s/ GEORGE W. FOLTA,
Judge of the District Court.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered October 14, 1953.

[Title of District Court and Cause.]

No. A-8214

MOTION FOR REVISION

The defendant, Matanuska Valley Lines, Inc., moves that the judgment in this action be revised or vacated for failure to comply with Rule 54(b) of the Rules of Civil Procedure.

This motion is predicated upon the records and files herein.

Dated at Anchorage, Alaska, this 23d day of October, 1953.

/s/ R. H. COTTIS, of
HELLENTHAL, HELLENTHAL & COTTIS,
Attorneys for Defendant Matanuska Valley Lines, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed October 23, 1953.

In the U. S. District Court for the District of Alaska,
Division Number Three at Anchorage

Consolidated Cases Nos. A-8214, A-8413, and A-8666

DOROTHY NEAL, et al.,

Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a Corporation, et el.,

Defendants.

MOTION TO SET ASIDE VERDICT AND ANY JUDGMENT ENTERED THEREON OR, IN THE ALTERNATIVE MOTION FOR A NEW TRIAL

The defendants in the above actions by their respective attorneys move the court in accordance with Rule 50 of the Rules of Civil Procedure that verdicts numbered 1, 2, 3, 4, and 5, and any judgment which may have been entered upon such verdicts, be set aside and that they have judgment entered in accordance with their respective motions for directed verdicts which were made at the close of all the evidence herein.

The said defendants in the alternative respectively move the court that the said verdicts and any judgment entered thereon be set aside and a new trial granted.

The grounds for these motions are made on behalf

of each of the defendants separately and are as follows:

1. The absence of evidence sufficient to support the verdicts.

2. The verdicts are contrary to the clear weight of the evidence.

3. Irregularity in the proceedings by which the defendants were prevented from having a fair trial in that the defendants were denied more than a total of three peremptory challenges for all three defendants and in that the trial was conducted in an atmosphere of haste.

4. The damages awarded are excessive and appear to have been given under the influence of passion or prejudice.

5. Various errors of law occurred at the trial and were excepted to, such errors including the admission in evidence of Dr. Starr's deposition without any showing that the deponent was not available for the trial; instructions 6, 8, 14, 15, 17, 18 and the forms of verdict 1, 2, 3, 4, and 5.

6. Cause A-8413 was forced to trial before it was at issue and arguments over the matter in court may have influenced the jury by leading it to believe that the defendants were reluctant to have the causes come to trial.

7. Trial of the cases was compelled although none of them was at issue with respect to the cross-

complaint of Matanuska Valley Lines, Inc., against the other defendants.

8. The jury failed to return either verdict number 6 or verdict number 7.

These motions are predicated upon the records, files, proceedings and evidence herein.

Dated at Anchorage, Alaska, this 5th day of October, 1953.

MATANUSKA VALLEY
LINES, INC.,

By /s/ RALPH H. COTTIS, of
HELLENTHAL, HELLENTHAL
& COTTIS,

By /s/ EVANDER CADE SMITH,
Its Attorneys.

JOHN DOE WILLIAMS and
LOIS WILLIAMS,

By /s/ RAYMOND E. PLUMMER,
Their Attorney.

Service of copy acknowledged.

[Endorsed]: Filed October 5, 1953.

[Title of District Court and Cause.]

No. A-8214

SUPPLEMENTARY MOTION FOR NEW TRIAL OR IN ALTERNATIVE TO SET ASIDE JUDGMENT OR IN ALTERNATIVE TO REDUCE AMOUNTS OF VERDICTS

The defendant, Matanuska Valley Lines, Inc., moves in the alternative that the judgment herein be set aside or that a new trial be granted or that the amount of the verdicts be reduced.

This motion is based on the attached affidavit of Bruce Groseclose and the records and files herein.

Dated at Anchorage, Alaska, this 23d day of October, 1953.

/s/ R. H. COTTIS, of
HELLENTHAL, HELLENTHAL & COTTIS,
Attorneys for Defendant Matanuska Valley Lines, Inc.

Affidavit

United States of America,
Territory of Alaska—ss.

I, Bruce B. Groseclose, being first duly sworn on oath, depose and say:

That I am one of the members of the Jury that

was duly impaneled and tried the cases of Neal, et al., vs. Matanuska Valley Bus Lines, et al.;

That this Affidavit is made voluntarily and without compensation or expectation of compensation to inform the attorneys for Matanuska Valley Bus Lines of information which they have sought out concerning certain remarks and procedures used in the deliberations by the Jury in the above-named cause.

We said that we knew the lawyers would get part of the amounts awarded if it was awarded and that in order for the plaintiffs to have anything left to pay their bills, hospital, etc., there would have to be added amounts for the lawyers. We did not know what the amount for the lawyers was. There was some discussion about how much the usual amount was Outside and so forth. One of the jurors had worked in a lawyer's office in Portland, and she knew what it was there, but we had no way of knowing here and it was none of our business. This woman said it was 50 per cent in Portland. Neal had the largest hospital bill, and we knew how much that was from evidence and so we said for him to have enough to pay that bill we will have to add some for the lawyers and their take so there would be enough for him to pay his bills. We knew it was out of our line and we had no reason to assume that.

There was not unanimity for quite a while as to whether the bus company could be held liable or not. Then someone got the Judge's instructions

again and read that the law was that if a person were driving down the road and saw a car coming on the other side—so they were going to meet the car—even though the car was going at an excessive rate of speed that they might assume that that car would stay on its side of the road and pass safely unless they should be able to see that the road conditions or the erratic manner in which the person were driving or something could cause an accident and in that case they should do something different than keep on proceeding down the road.

It was at that point that the whole matter hinged on whether the bus company were liable or not. We were sure that the bus driver had not seen the possibility of danger, but the question was should she have seen, knowing the condition of the road at the turn and the fact that the truck was coming at an excessive rate of speed, as she testified. We decided that she could have at least anticipated trouble and it was at that point that the whole matter hinged. If it was not "should" then the bus company would have had no liability, and so it is at that fine point between "could" and "should"—if she should have been able to anticipate trouble, then the bus company would have been liable, or if it was a matter of "could" then it was different. So the jury found that she "should have anticipated trouble."

We said let us assume that each of them was going 20 miles an hour, then they would be arriving at a given point at the rate of 40 miles an hour, and somebody figured out that it was from the time the

bus driver said she saw the truck driver—there were several testimonies—she changed it—we decided that she wasn't able to judge distance in feet. We disregarded her statements about distance in feet. From where we could assume the distance was, it would have taken two and a half (2½) seconds to stop if road conditions had been good.

In Witness Whereof, I have hereunto set my hand and seal this 21st day of October, 1953.

/s/ BRUCE B. GROSECLOSE.

Subscribed and Sworn to before me this 22d day of October, 1953.

[Seal] /s/ FRANCES RAY,
Notary Public for Alaska.

My commission expires: 12/11/56.

Service of copy acknowledged.

[Endorsed]: Filed October 23, 1953.

[Title of District Court and Cause.]

No. A-8214

NOTICE OF APPEAL

Notice is hereby given that Matanuska Valley Lines, Inc., the defendants above named, hereby appeals to the United States Court of Appeals for the

Ninth Circuit from the final judgment entered in this action on the 1st day of October, 1953.

/s/ RALPH H. COTTIS, of
HELLENTHAL, HELLENTHAL & COTTIS,
Attorneys for Defendants.

Service of copy acknowledged.

[Endorsed]: Filed February 27, 1954.

[Title of District Court and Cause.]

No. A-8214

SUPERSEDEAS BOND

Know All Men By These Presents, that Matanuska Valley Lines, Inc., as principal, and the undersigned as sureties, are held and firmly bound unto the plaintiff Dorothy Neal in the sum of Seventy Thousand Dollars ($70,000.00) and to the plaintiff Nathaniel Neal, Jr., in the sum of Ten Thousand Dollars ($10,000.00).

The condition of this Bond is that if the Judgment in full herein be satisfied, together with costs, interest and damages for delay if for any reason the appeal heretofore taken in this cause be dismissed; or if the Judgment be affirmed or modified and as affirmed or modified be satisfied in full together with such costs, interest and damages as the United States Court of Appeals for the Ninth Circuit may adjudge and award then this Bond shall be null and void; otherwise to remain in full force and effect.

And Know All Men Further By These Presents that the undersigned as sureties severally submit themselves to the jurisdiction of the United States District Court for the Third Judicial Division of Alaska and irrevocably appoint the Clerk of said Court as their respective agents upon whom any papers affecting their liability on this Bond may be served. And the undersigned sureties agree that their respective liability may be enforced on motion without the necessity of an independent action, the motion and such notice of the motion as the Court prescribes to be served on the Clerk of the Court who shall forthwith mail copies to the undersigned sureties if their respective addresses be known.

Each of the undersigned sureties limits his liability hereunder to the amount appearing after his signature.

Witness our hands and seals this 9th day of April, 1954.

MATANUSKA VALLEY
LINES, INC.,

By /s/ RUSSELL SWANK,
Principal.

Name	Amount
/s/ E. H. OLING Surety.	$5,000.00
/s/ JOE PACKARD Surety.	$5,000.00

Name	Amount
/s/ RUSSELL SWANK Surety.	$5,000.00
/s/ LEWIS E. SIMPSIN Surety.	$2,500.00
/s/ LOUIS ODSATHER Surety.	$2,500.00
/s/ MORMAN G. LANGE Surety.	$5,000.00
/s/ J. A. COLUMBUS Surety.	$5,000.00
/s/ M. W. CLARK Surety.	$2,500.00
/s/ LORAN E. CAMON Surety.	$2,500.00
/s/ LENA DENISON Surety.	$5,000.00
/s/ JOHN T. CAMPBELL Surety.	$5,000.00
/s/ FRED J. SNYDER Surety.	$5,000.00
/s/ H. M. BAKER Surety.	$5,000.00
/s/ M. B. KIRKPATRICK Surety.	$5,000.00
/s/ JOHN H. CLAWSON Surety.	$5,000.00

Name	Amount
/s/ FRANK M. REED Surety.	$5,000.00
/s/ J. C. MORRIS Surety.	$5,000.00
/s/ ROBERT N. KESSLER Surety.	$2,500.00
/s/ E. D. HILLSTRAND Surety.	$2,500.00

Justification of Sureties

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 305 Eagle; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ E. T. OLING,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 325 Seventh Ave.; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ JOE PACKARD,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 4th East H St., and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ RUSSELL SWANK,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 601 I Street; and that my net worth is the sum of more than Twenty-five Hundred Dollars ($2,500.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ LEWIS E. SIMPSIN,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 537 M St.; and that my net worth is the sum of Twenty-five Hundred Dollars ($2,500.00) ex-

clusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ LOUIS ODSATHER,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at Mountain View, Alaska; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ NORMAN G. LANGE,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ CARL J. HUTTON,
Notary Public for Alaska.

My commission expires:

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at Box 539, Anchorage; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ J. A. COLUMBUS,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ C. A. POLLOCK,
Notary Public for Alaska.

My commission expires April 25, 1954.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at Box 1679, Anchorage; and that my net worth is the sum of more than Twenty-five Hundred Dollars ($2,500.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ M. W. CLARK,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 1209 Mt. McKinley Apt.; and that my net worth is the sum of more than Twenty-five Hundred ($2,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ LORAN E. CARMON,
Surety.

Sworn to and subscribed before me this 7th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ H. M. BAKER,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WINSLOW H. FRITZLAN,
Notary Public for Alaska.

My commission expires Feb. 10, 1958.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at Anchorage, Alaska; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ FRANK M. REED,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ IRENE WELCH,
Notary Public for Alaska.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at Turnagain Arms Apts., Anchorage, Alaska; and that my net worth is the sum of Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ M. B. KIRKPATRICK,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal]: /s/ MARY P. BARGERON,
Notary Public for Alaska.

My commission expires Sept. 14, 1957.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 1007 H St., Anchorage, Alaska; and that my

net worth is the sum of Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ JOHN H. CLAWSON,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ MARY P. BARGERON,
Notary Public for Alaska.

My commission expires Sept. 14, 1957.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 602-4th, Anchorage, Alaska; and that my net worth is the sum of more than Five Thousand Dollars ($5,000.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ J. C. MORRIS,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ WANDA J. WILLFORD,
Notary Public for Alaska.

My commission expires Oct. 5, 1957.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 2020 Hillstrand Blvd.; and that my net worth is the sum of more than Twenty-five Hundred Dollars ($2,500.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ ROBERT N. KESSLER,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ NORA FAY CARLOCK,
Notary Public for Alaska.

My commission expires Oct. 27, 1956.

United States of America,
Territory of Alaska—ss.

I, the undersigned surety, on oath say that I reside at 2010 Hillstrand Blvd.; and that my net

worth is the sum of more than Twenty-five Hundred Dollars ($2,500.00) exclusive of property exempt from execution and under and over all just debts and liabilities.

I further say that I am not an attorney, marshal, clerk of any court or other officer of any court.

/s/ EARL D. HILLSTRAND,
Surety.

Sworn to and subscribed before me this 8th day of April, 1954, at Anchorage, Alaska.

[Seal] /s/ NORA FAY CARLOCK,
Notary Public for Alaska.

My commission expires Oct. 27, 1956.

[Endorsed]: Filed April 9, 1954.

[Title of District Court and Cause.]

No. A-8214

COST BOND

Know All Men By These Presents: That we, Matanuska Valley Lines, Inc., as Principal, and the General Casualty Company of America, a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, as Surety, are held and firmly bound unto Dorothy Neal and Nathaniel Neal, Jr., the plaintiffs above named, in the full sum of Two

Hundred Fifty Dollars ($250.00), for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition Of The Above Obligation Is Such That, Whereas the defendant has appealed to the Court of Appeals for the Ninth Circuit by notice of appeal filed February 26, 1954, from the judgment of this court entered October 1, 1953, if the defendant shall pay all costs adjudged against him if the appeal is dismissed or the judgment affirmed or such costs as the appellate court may award if the judgment is modified, then this bond is to be void; but if the defendant fails to perform this condition, payment of the amount of this bond shall be due forthwith.

Dated this 3rd day of March, 1954.

MATANUSKA VALLEY
LINES, INC.,
Principal;

By /s/ EVANDER C. SMITH,
Attorney in Fact.

[Seal] GENERAL CASUALTY
COMPANY OF AMERICA,

By /s/ GRACE M. McCONNELL,
Attorney-in-Fact.

[Endorsed]: Filed March 5, 1954.

[Title of District Court and Cause.]

No. A-8214

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, Wm. A. Hilton, Clerk of the above-entitled Court do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, and including specifically the designated portion of the record and file of such action, including the bill of exceptions setting forth all the testimony taken at the trial of the cause and designated exhibits introduced by the respective parties, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled cause by the above-entitled Court on October 14, 1953, to the United States Court of Appeals at San Francisco, California.

[Seal] WM. A. HILTON,
Clerk of the District Court for the Territory of Alaska, Third Division.

By /s/ CARETA BRYANT,
Chief Deputy Clerk.

[Endorsed]: No. 14529. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Lines, Inc., a corporation, Appellant vs. Dorothy Neal and Nathaniel Neal, Jr., Appellees. Transcript of Record. Appeal from the United States District Court for the District of Alaska Third Division.

Reporter's transcript in Case No. 14529.

Filed September 27, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals for the Ninth Circuit at San Francisco

No. 14529

MATANUSKA VALLEY LINES, INC.,

Appellant,

vs.

DOROTHY NEAL and NATHANIEL NEAL, JR.,

Appellees.

STATEMENT OF POINTS

The defendant appellant, Matanuska Valley Lines, Inc., herewith presents to the Circuit Court for the Ninth Circuit the following particulars and points upon which it is claimed the trial Court erred:

1. In failing to dismiss the Complaint upon Motion of the defendant Matanuska Valley Lines, Inc., made upon the completion of the plaintiff's case in chief for the reason that the plaintiff presented insufficient evidence of negligence on the part of the said defendant to constitute a prima facie case.

2. In failing to direct a verdict upon the Motion of the defendant Matanuska Valley Lines, Inc., made upon the completion of the defendant's case in chief for the reason that the plaintiff had not presented sufficient evidence of negligence on the part of the said defendant Matanuska Valley Lines, Inc., to take the case to the jury.

3. That the verdict of the jury and the judgment entered thereon against the defendant Matanuska Valley Lines, Inc., are contrary to the evidence produced in the case.

4. In permitting the defendant Matanuska Valley Lines, Inc., to exercise only one set of peremptory challenges although there were three (3) cases being tried by the Court to expedite the matters.

5. That the Court's Instructions to the Jury, as to the following numbered instructions in the designated parts were erroneous:

Instruction No. Fourteen (14). We take exception to Instruction No. Fourteen (14) on the grounds that there is no evidence to support the idea that the bus might have been exceeding the speed limit; that there is no credible evidence that the speed limit was fifteen (15) miles an hour; that the highway regulations actually state that fifteen (15) miles an hour shall be deemed reasonable and prudent but do not state that it will be unreasonable and imprudent to fail to stay within this limit. We take exception to that portion of the instruction which states that otherwise the speed limit will be twenty-five (25) miles an hour. We refer to the Highway Instruction Regulation, Section 53C, and submit that it should be fifty (50) miles an hour.

Instruction No. Fifteen (15). Instruction No. Fifteen (15), lines 13 through 17, reads as follows: "Likewise, if you find that the driver of the bus of

the defendant Matanuska Valley Lines, Inc., was exceeding the speed limit at the time of the collision and that this fact was the sole proximate cause of the collision, you should find against that defendant alone," we take exception to this on the grounds that there was no credible evidence to support the inclusion of that portion of the instructions.

Instruction No. Seventeen (17). We take exception to Instruction No. Seventeen (17), lines 11 through 14, which reads as follows: "Of course, if you find that only one of the defendants was negligent and that such negligence was the proximate cause of the collision and the resultant injuries and damages, then you should find only against that defendant," on the grounds there was no possibility of a single verdict against the Matanuska Valley Lines, Inc., and not against the co-defendants Williamses.

Instruction No. Eighteen (18). We take exception to Instruction No. Eighteen (18), which reads as follows: "You are instructed that, in arriving at the verdict as to the amount of damages for permanent injuries, if any, resulting in a permanent loss of earnings by the plaintiff, if any, you may consider the mortality tables referred to in evidence as tending to prove the life expectancy of the plaintiff: Dorothy Neal. Such tables are not binding, however, and you may determine such life expectancy from your own observation of the plaintiff, and such other assistance as you may obtain from the evidence, and all the facts and circumstances in

evidence, including such tables. You have a right to consider the probability of accident, sickness, or other happenings reasonably likely to terminate the results of plaintiff's injuries.

"In making an award for permanent loss of earning power, if any, the present worth of such award must be determined. The present worth of a sum of money payable in the future is such a sum as would, if put at simple interest, at the rate of return that a reasonable and prudent person would expect in making investments, amount to what the plaintiff Dorothy Neal could reasonably expect to earn during her life. To illustrate: The present worth of $10,000 payable 20 years from today is determined by the following formula:

$$\text{"}\frac{10{,}000}{1 \text{ plus } 20 \text{ times } .04} = \frac{\$10{,}000}{1.8} = \$5{,}555.55$$

"Assuming that 4% interest would be the rate of return that a reasonable and prudent man would expect to obtain in making investments, it is for you to decide what that rate of return, or interest, would be, considering all the circumstances. Similarly the present worth of $1,000 to be paid over a period of 10 years, with an assumed safe investment rate of 5% is calculated by dividing $1,000 by the sum of one plus the number of years of life expectancy times the investment rate or

$$\text{"}\frac{1000}{1 \text{ plus } (10 \text{ times } .05)} = \frac{1000}{1 \text{ plus } .05} = \frac{1000}{1.5} = \$666.$$

"After you have determined what the plaintiff Dorothy Neal would earn during her life, you should determine the present value thereof according to the foregoing formula, and award her that sum, if you find her entitled to recover for loss of earning power," on the grounds that there was no evidence introduced to support that formula; that there was no evidence introduced on what a reasonable return from investment amounts to; on the grounds that the use is simple interest instead of compound interest; and on the grounds that it is too technical for the jury to follow accurately.

HELLENTHAL, HELLENTHAL, COTTIS and
EVANDER C. SMITH,

MARTIN & SHORTS,

Attorneys for Appellant Matanuska Valley Lines, Inc.

By /s/ EVANDER C. SMITH.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 21, 1954.